

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DIANE DENMARK,

Plaintiff

v.

Civil Action No. 04-12261-DPW

LIBERTY MUTUAL ASSURANCE  
COMPANY OF BOSTON, THE GENRAD,  
INC. LONG TERM DISABILITY PLAN,  
THROUGH TERADYNE, INC., AS  
SUCCESSOR FIDUCIARY

Defendants

**DEFENDANTS' MOTION FOR APPLICATION OF ARBITRARY AND CAPRICIOUS  
STANDARD OF REVIEW**

Pursuant to the Joint Statement and schedule entered by the Court in this case, Defendants, Liberty Life Assurance Company of Boston ("Liberty Life") and The Genrad Inc. Long Term Disability Plan, through Teradyne, Inc., as Successor Fiduciary ("The Plan"), now move this Court to apply the "arbitrary and capricious" standard of review in this ERISA denial of benefits case. As set forth in Defendants' memorandum in support of this motion, the Court should apply this deferential standard of review because the Plan contains the appropriate language granting discretionary authority to Liberty Life to determine eligibility for benefits and to construe the terms of the plan.

WHEREFORE, Defendants respectfully submit that the decision to deny Plaintiff's request for long-term disability benefits should be reviewed by this Court under the "arbitrary and capricious" standard of review.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

The undersigned counsel hereby certifies that the parties have conferred and attempted in good faith to resolve or narrow the issues, including during a telephone conference between Jonathan Feigenbaum, counsel for Plaintiff, and Richard Paterniti, counsel for Defendants.

Respectfully submitted,

LIBERTY LIFE ASSURANCE COMPANY  
OF BOSTON, THE GENRAD, INC. LONG TERM  
DISABILITY PLAN, THROUGH TERADYNE,  
INC., AS SUCCESSOR FIDUCIARY  
By their attorney,

/s/Richard W. Paterniti

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